

FCC HAN SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-175

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ada, Newcastle and Watonga,
Oklahoma)

RM-8707

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: November 21, 1995; Released: December 6, 1995

Comment Date: January 29, 1996

Reply Comment Date: February 13, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tyler Broadcasting Corporation ("petitioner"), proposed assignee of Station KTLS, Ada, Oklahoma, requesting the reallocation of Channel 227C1 from Ada to Newcastle, Oklahoma, and the modification of Station KTLS' license to specify Newcastle as its community of license.¹ To accommodate the allotment at Newcastle, petitioner also requests that Channel 230A be substituted for Channel 228A at Watonga, Oklahoma, and that the license of Station KIMY be modified to specify the alternate Class A channel. Petitioner states that it will apply for the channel, if reallocated to Newcastle.

2. Petitioner contends that the reallocation of Channel 227C1 to Newcastle would result in a preferential arrangement of allotments since it would provide the community with its first local aural broadcast service without depriving Ada of its sole local aural broadcast service. In addition, petitioner states that the change of community will enable Station KTLS to serve an additional 948,152 persons within a 13,169 square kilometer area. While this action would also result in a loss of service to 100,393 persons, within 8,884 square kilometers, it submits that the entire loss area will continue to be well-served since the population within the loss area will retain at least five primary aural services.

3. Petitioner states that Newcastle, with a population of 4,214 persons, is an incorporated city with a mayor-city council type of government.² It states that Newcastle provides its residents with municipal services such as police and fire protection, water, sewer and garbage pickup. Further, according to petitioner, Newcastle has its own commercial businesses which include motels, banks, restaurants, grocery stores, as well as its own schools and churches. Finally, petitioner points out that Newcastle has its own weekly newspaper. Ada, on the other hand, with a population of 15,800 persons, presently receives local aural service from three fulltime outlets, AM Station KADA and FM Stations KTLS and KADA-FM.

4. The allotment of Channel 227C1 to Newcastle requires the substitution of Channel 230A for Channel 228A at Watonga, Oklahoma. Petitioner states that Station KIMY is currently restricted to operating with 3 kW of power. However, should it change channels, petitioner points out that the station could increase power to 6 kW. Further, in compliance with Commission policy, petitioner states its intention to reimburse the licensee of Station KIMY for the reasonable costs associated with the change of channel.

5. We recognize that neither Ada nor Newcastle are located within an Urbanized Area. However, we have recently ruled that if a station seeks to change its community of license to one which is outside an urbanized area but whose signal would place a city-grade, 70 dBu, signal over 50% or more of an Urbanized Area, the proponent will be required to provide the same showing as currently required for those parties seeking to move to a community within an Urbanized Area. See, *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). In this case, if Channel 227C1 is allotted to Newcastle, Station KTLS will provide 95% of the Oklahoma City Urbanized Area with a 70 dBu signal. Therefore, petitioner is requested to provide a showing that Newcastle warrants a first local service preference. See, *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).³ A staff engineering analysis of this proposal shows that the allotment of Channel 227C1 to Newcastle will result in a population gain of 777,961 persons within an 11,888 square kilometer area with a loss in service to 100,387 persons within a 10,758 square kilometer area. While the majority of the loss area will continue to receive at least five fulltime services, 971 persons within a 338 square kilometer area will receive only four such services and 389 persons within a 135 square kilometer area will receive only three such services.

Technical Summary

6. Channel 227C1 can be allotted to Newcastle in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.5 kilometers (4.7 miles) south to accommodate petitioner's desired

¹ Petitioner's assignment of license application (BALH-950609GO) was granted on August 8, 1995, but has not yet been consummated. Although the present licensee, Oklahoma Broadcasting Company ("OBC"), states that it has no objection to petitioner filing the instant petition for rule making, it fails to state its intention to prosecute the change of community should the assignment of license not be consummated by the time the rule making is concluded. Therefore, OBC is requested to state in comments its intention to apply for Channel 227C1 at New-

castle if it is the licensee at the conclusion of the rule making.

² All population figures are taken from the 1990 U.S. Census, unless otherwise indicated.

³ See, also, *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), and *Elizabeth City, North Carolina and Chesapeake, Virginia*, 7 FCC Rcd 6815 (1992) (request for supplemental information to show that Chesapeake, VA, is deserving of a local service preference).

transmitter site. Channel 230A can be allotted to Watonga in compliance with the Commission's minimum distance separation requirements at Station KIMY's presently licensed transmitter site.⁴

7. Based on the information before us, we are unable to tentatively determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe petitioner's proposal warrants consideration because the allotment of Channel 227C1 to Newcastle could provide the community with its first local aural service without depriving Ada of its sole local aural broadcast service. As requested, we also propose to modify Station KTLS' license to specify Newcastle as its community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 227C1 at Newcastle or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

8. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Channel No.		
City	Present	Proposed
Ada, Oklahoma	227C1, 244A	244A
Newcastle, Oklahoma	--	227C1
Watonga, Oklahoma	228A	230A

9. Accordingly, IT IS ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Vera L. Dunn ("Dunn"), licensee of Station KIMY, Watonga, Oklahoma, SHALL SHOW CAUSE why her license SHOULD NOT BE MODIFIED to specify operation on Channel 230A as proposed herein instead of her present Channel 228A.

10. Pursuant to Section 1.87 of the Commission's Rules, Dunn may, not later than January 22, 1996, file a written statement showing with particularity why her license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Dunn furnish additional information. If Dunn raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Dunn will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

11. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensee of Station KIMY, as follows: Vera L. Dunn, 502 Santa Fe, Anthony, KS 67003.

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

13. Interested parties may file comments on or before **January 29, 1996**, and reply comments on or before **February 13, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036
(Counsel to petitioner)

14. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

15. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

⁴ The coordinates for Channel 227C1 at Newcastle are 35-10-44 North Latitude and 97-36-03 West Longitude. The coordinates

for Channel 230A at Watonga are 35-54-17; 98-23-09.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.